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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:)
Peter Bressler et al.) Examiner: H. Payer
Title: SHAVING APPARATUS) Group Art Unit: 3724
Serial No.: 10/749,701)
Filed on: December 30, 2003) (Our Docket No.: 6579-0149)

Middletown, Connecticut, August 9, 2005

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P.O. Box 1450
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APPEAL BRIEF

The present Appeal Brief includes information and arguments presenting the Appellant's position on appeal in the above-identified application. The Brief is being filed within the allowed two-month time period from the date of filing Appellant's Notice of Appeal, which was mailed on June 9, 2005. A check covering the fee for filing an appeal brief is enclosed.

Appellants respectfully requests that the Appeal Board consider the Arguments presented herein.

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I. REAL PARTY IN INTEREST

The inventors, Peter Bressler, David Schiff, and Andrew Pennella, have all assigned their entire right, title and interest in the present invention to Eveready Battery Company, Inc. Thus, the real party in interest is Eveready Battery Company, Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interference proceedings known to Appellants, Appellants' legal representatives, or assignees that would directly affect or be directly affected by or have a bearing on the decision of the Board of Appeals and Interferences in this Appeal.

III. STATUS OF CLAIMS

Claims 1-18 are pending. Claims 1-5, 8-14, and 16-18 have been finally rejected. Claims 6, 7 and 15 have been cancelled. Claims 1-5, 8-14, and 16-18 are appealed herein.

IV. STATUS OF AMENDMENTS

No amendments have been made since the final rejection.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to a shaving apparatus that includes a razor blade, a reservoir for containing a non-solid shaving aid material, at least one conduit extending between the reservoir and one or more ports, and a pump that is in fluid communication with one or both of the reservoir and the conduit. Movement of the razor blade actuates the pump, and the pump transfers shaving aid material from the reservoir to the one or more ports. (Specification, para. [0005], Figures 1-6.)

The invention, in one embodiment, is directed to a shaving apparatus comprising one or more razor blades; a reservoir for containing a non-solid shaving aid material; at least one conduit extending between the reservoir and one or more ports; and a pump in fluid communication with one or both of the reservoir and the conduit. (Specification, paras. [0016-0017], Figures 2 and 5.) Movement of the one or more razor blades actuates the pump, and the pump transfers shaving aid material from the reservoir to the one or more ports. (Specification, para. [0018], Figures 2 and 5.)

The invention, in another embodiment, is directed to a shaving aid material pump comprising a reciprocating mechanism selectively operable to transfer shaving aid material from a reservoir to a port for dispensing to a surface being shaved. The reciprocating mechanism includes a biasing mechanism. (Specification, paras. [0016-0018], Figures 2 and 5.)

A copy of the claims, as they currently stand, is presented in the Claims Appendix (Section VIII).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A) Claims 1-5, 8-14, and 16-18 stand rejected under 35 U.S.C. §102(b) as being anticipated by WO 00/47374 to Simms (hereinafter “the ‘374 reference”).

B) Claims 12-14 and 16-18 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,417,468 to Miyauchi (hereinafter “the ‘468 patent”).

C) Claims 12-14 and 16-18 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,686,361 to Resnick et al. (hereinafter “the ‘361 patent”).

VII. ARGUMENT

A) Claims 1-5, 8-14, and 16-18 were improperly rejected under 35 U.S.C. §102(b) as being anticipated by the ‘374 reference (WO 00/47374)

Claims 1 and 12 are independent claims. Claims 2-5, and 8-11 depend from claim 1 and claims 13, 14, and 16-18 depend from claim 12.

Claim 1 is directed to a shaving apparatus comprising one or more razor blades; a reservoir for containing a non-solid shaving aid material; at least one conduit extending between the reservoir and one or more ports; and a pump in fluid communication with one or both of the reservoir and the conduit. Movement of the one or more razor blades actuates the pump, and the pump transfers shaving aid material from the reservoir to the one or more ports.

Claim 12 is directed to a shaving aid material pump comprising a reciprocating mechanism selectively operable to transfer shaving aid material from a reservoir to a port for dispensing to a surface being shaved. The reciprocating mechanism includes a biasing mechanism.

The '374 reference is directed to a safety razor having a blade unit 1 pivotally mounted on a carrying structure 2 for movement about an axis 14. The carrying structure 2 is attached to a container 3. (Page 5, lines 1-3.) The container 3 includes a canister 15 and a fluid reservoir 21 formed within a bag 19, the bag having a flexible wall which is collapsible as the content of the bag are discharged. A neck at the upper end of the bag 19 is sealed to a valve housing 20. A resiliently compressible annular valve seat 22 is held between a top wall of the canister 15 and the valve housing 20. A valve member 24 is disposed within the valve housing 20. A closed space 23 confined between the canister 14 and the bag 19 contains a propellant gas for forcing the bag to collapse and discharge its contents when the valve member-24 is opened relative to the valve seat 22. (Page 6, lines 1-14.)

The '374 reference fails to disclose, teach, or suggest a shaving apparatus comprising a pump that is actuated by the movement of one or more razor blades, as recited in claim 1. The Examiner, in the Office Action of March 10, 2005, contended that "Applicants' argument appears to be directed to the use of the term (i.e., pump vs. valve) rather than to delineating claimed structure not shown by the prior art." In the Advisory Action, the Examiner further contended that "[t]he reciprocating mechanism of WO '374 is indeed a pump as claimed. Specifically, the re[ci]procating mechanism (i.e. a pump) of the '374 reference comprises all the claimed structure..."

The Appellants disagree the Examiner's statement because pumps and valves are two very different mechanisms having very different structure, and Appellants are not using the term "pump" outside of its ordinary and customary meaning in such a way as to cause it to be confused with the term "valve." According to Perry's Handbook for Chemical Engineers, a "pump" is a device that transfers a fluid by a reciprocating action, a rotary action, or a centrifugal action. Similarly, Webster's Ninth New Collegiate Dictionary defines a pump as "a device that raises, transfers, or compresses fluids..." A valve, on the other hand, is defined in Perry's as a mechanical device that controls the flow of a fluid. Webster's defines a valve as a mechanical device "by which the flow of liquid, gas, or loose material in bulk may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways..." A comparison of the definitions of a pump and a valve then allows one to logically conclude that a device that raises, compresses, or transfers fluids via a reciprocating action (i.e., a pump) is not a device that controls fluid flow or that starts, stops, or regulates fluid flow by opening, shutting, or obstructing an opening (i.e., a valve). A pump positively acts on a fluid to move it, whereas a valve is a passive device that either allows or prevents fluid transfer. Thus, by definition, a pump and a valve are two different mechanisms. The fact that the valve of the '374 reference "reciprocates" during use to permit pressurized fluid to pass therethrough does not make it a reciprocating pump (i.e., a device which, through a reciprocating action, actually pressurizes the fluid to cause the fluid to move).

Because Appellants are not using the term "pump" outside of its ordinary and customary meaning, and because Appellants use of the term can in no way be confused with a valve, there is no need to delineate the claimed pump structure from the valve structure of the prior art other than to say that Appellants claim a pump and the prior art recited a valve.

The pump as recited in claim 1 transfers non-solid shaving aid material via movement of the razor blades, which move in a reciprocating motion. When the razor blades of the pump as recited in claim 1 move, non-solid shaving aid is transferred. The term "pump" is used within its ordinary and customary meaning. The device of the '374 reference, on the other hand, simply opens or closes to allow fluid to flow or to stop fluid flow. Such a device (i.e., one that opens and closes to allow fluid to flow or to stop fluid flow) comports with the ordinary and customary definition of a valve – which falls outside of the scope of claim 1. When the valve of the '374 reference is operated, a pressurized gas is released, and such a

release forces a bag to collapse, thereby dispelling the contents of the bag. The reciprocal motion (movement of the blades) of the pump as recited in claim 1 is not a simple opening or closing of a valve to allow fluid to pass therethrough, as it is in the '374 reference.

Furthermore, contrary to the Examiner's allegation, the device of the '374 reference does not transfer a fluid by the reciprocating up and down motion of the stem/valve arrangement.

Such motion merely opens the valve to release pressurized gas. Without pressurized gas in the fluid, no amount of reciprocal action of the stem/valve arrangement will move the shaving fluid because the stem/valve arrangement does not act on the fluid as a pump would.

Accordingly, the pump, as recited in claim 1, is patentably distinct and not anticipated by the device of the '374 reference. Appellants, therefore, respectfully request that the Examiner withdraw the rejection of claim 1 based on the '374 reference.

The '374 reference further fails to disclose, teach, or suggest a shaving aid material pump, as recited in claim 12. Pumps are not valves, as described above. Therefore, the shaving aid material pump of claim 12 (the pump being a device, by definition, that transfers fluid by a reciprocating motion) is not a valve that is selectively operated to release a pressurized gas that causes the contents of a bag to be discharged. Accordingly, the shaving aid material pump, as recited in claim 12, is not anticipated by the device of the '374 reference. Appellants, therefore, respectfully request that the Examiner withdraw the rejection of claim 12 based on the '374 reference.

To anticipate a claim under 35 U.S.C. §102, a single reference must disclose each and every element of the claimed invention. Absence of the reference of any claimed element negates anticipation. Because the '374 reference fails to disclose, teach, or suggest a shaving apparatus comprising a pump that is actuated by the movement of one or more razor blades, as recited in claim 1, the '374 reference fails to disclose each and every element of the claimed invention. Thus, claim 1 is not anticipated by the '374 reference. Furthermore, because the '374 reference further fails to disclose, teach, or suggest a shaving aid material pump, as recited in claim 12, the '374 reference fails to disclose each and every element of the claimed invention. Thus, claim 12 is not anticipated by the '374 reference. For at least these reasons, claims 1 and 12 are allowable, and Appellants respectfully request that the Board overturn the rejections of claim 1 and 12.

Dependent claims, by definition, add recitations that further define the subject matter of the independent claims from which they depend. Because claims 2-5 and 8-11 depend from claim 1, and because claim 1 is asserted to be novel for at least the reasons presented above, claims 2-5 and 8-11 are allowable. Accordingly, Appellants respectfully request that the Board overturn the rejections of claims 2-5 and 8-11.

B) Claims 12-14 and 16-18 were improperly rejected under 35 U.S.C. §102(b) as being anticipated by the '468 patent (U.S. Patent No. 3,417,468 to Miyauchi)

The teachings of claim 12 are presented above.

The '468 patent is directed to a shaving device having a handle that defines a refillable chamber. (Abstract.) The shaving device comprises a blade securing part 1, a discharge control part 2, and a grip 3 that also serves as a container for storing shaving liquid 4. The shaving liquid 4 is discharged through the blade securing part 1. (Column 2, lines 28-33.) The discharge control party 2 comprises a securing portion 13 of an intermediate member 8 and a rotating member 16 that rotates and axially moves within the intermediate member 8. A lower portion of the intermediate member 8 engages the grip 3, the grip being provided at its uppermost and lowermost parts with valves 19 and 21, respectively. The valve 19 is provided with a pipe 20 to effect the operation of the valve. (Column 2, lines 49-64.) When the rotating member 16 is biased downward, the pipe 20 is also biased downward such that a small hole in the pipe 20 is moved out of engagement with a seat member 26. "Thus, the valve 19 is opened so that the shaving liquid 4 pressurizedly contained within the grip-container 3" is discharged from the shaving liquid discharging part. (Column 3, lines 27-39.)

The '468 patent fails to disclose, teach, or suggest a shaving aid material pump. The definition of a pump is given above. In contrast, the device of Miyauchi is simply a mechanical device that controls the flow of a fluid (a mechanical device by which the flow of fluid may be started, stopped, or regulated by a movable part that opens, shuts, or partially obstructs one or more ports or passageways). As stated in the '468 patent, col. 3, lines 26-39 (emphasis added):

The operation of this razor is as follows: When the adjusting ring 14 is turned so that the rotating member 16 is pushed down, the pipe 20 is also pushed

down by said member 16 so that the small hole 25' provided across the axial passage 25 of the pipe 20 is moved out of engagement with the seat member 26. Thus, the valve 19 is opened so that the shaving liquid 4 pressurizedly contained within the grip-container 3 rises in the discharge pipe 27 and passes through valve casing 22, the small hole 25', the passage 25, the passage 10 of the rotating member 16, and the hollow portion 9 of the screw 7, and finally reaches the passage 11. Then, the liquid 4 is discharged in a foamy state from that portion of the razor which is provided with the spreader 12.

In other words, like the '374 reference, the device of Miyauchi is a valve. The shaving aid material pump of the present invention (which drives the shaving aid material via a reciprocating action) is not a valve that, when operated, simply releases a pressurized gas. Unless the shaving liquid is previously pressurized, the valve of the '374 patent is useless as a "pump." Accordingly, the shaving aid material pump, as recited in claim 12, is not anticipated by the device of Miyauchi. Appellants, therefore, respectfully request that the Board overturn the rejection of claim 12 based on Miyauchi.

As stated above, to anticipate a claim under 35 U.S.C. §102, a single reference must disclose each and every element of the claimed invention. Absence of the reference of any claimed element negates anticipation. Because Miyauchi fails to disclose, teach, or suggest a shaving material pump, as recited in claim 12, Miyauchi fails to disclose each and every element of the claimed invention. Thus, Miyauchi necessarily fails to anticipate the claimed invention. Appellants accordingly respectfully request that the Board overturn the rejection of claim 12 based on Miyauchi.

As stated above, dependent claims, by definition, add recitations that further define the subject matter of the independent claims from which they depend. Because claims 13, 14, and 16-18 depend from claim 12, and because claim 12 is asserted to be novel for at least the reasons presented above, claims 13, 14, and 16-19 are likewise allowable. Accordingly, Appellants respectfully request that the Board overturn the rejections of claims 13, 14, and 16-18, as well.

C) Claims 12-14 and 16-18 have been improperly rejected under 35 U.S.C. §102(b) as being anticipated by the '361 patent (U.S. Patent No. 2,686,361 to Resnick et al.)

The teachings of claim 12 are defined above.

Resnick is directed to a single- or multiple-bladed safety razor that incorporates a reservoir for containing a shaving lubricant and means for forcing and controlling the quantity of lubricant to a shaving head of the razor forward of the blade edge(s). (Column 1, lines 1-6.) The reservoir (designated by reference numeral 10 in the Figures) is formed as a hollow, relatively elongated container sized and shaped such that the razor can be grasped by the hand of a user. (Column 2, lines 35-45.) The reservoir 10 is adapted to contain a quantity of a shaving lubricant 20. (Column 2, lines 59-61.) The shaving lubricant 20 is maintained under gas pressure in such a manner as to cause the lubricant to be formed into a lather whenever a suitable valve is opened. Whenever such a valve is opened, the lubricant is discharged under the substantial pressure through the valve and is forced through the shaving head and spread over the user's hair and skin. (Column 3, lines 2-15.)

Resnick fails to disclose, teach, or suggest a shaving aid material pump. In contrast, the device of Resnick has a selectively openable member that, when opened, releases a pressurized gas that drives contained shaving liquid. For example, as stated in col. 4, lines 2-11 (emphasis added):

When...the plunger 41 is depressed, the valve inlet openings 44 will be brought into communication with the interior of the counterbore 34. Thus, the shaving lubricant, which as noted before is maintained under pressure within the reservoir, will be forced through the tube 32, counterbore 34, inlet openings 44, and will move upwardly within the axial bore of the plunger in seeking an escape.

As stated above, the present invention as claimed is directed to a pump, and in contrast, the device of Resnick is simply a valve. As stated above, a pump is not a valve. The valve of the Resnick device, in similar fashion to the device of the Miyauchi device, is useless as a "pump" if the shaving lubricant is not already pressurized. Accordingly, the shaving aid material pump as recited in claim 12, is not anticipated by the device of Resnick. Appellants, therefore, respectfully request that the Examiner withdraw the rejection of claim 12 based on the Resnick reference.

As stated above, to anticipate a claim under 35 U.S.C. §102, a single reference must disclose each and every element of the claimed invention. Absence of the reference of any claimed element negates anticipation. Because Resnick fails to disclose, teach, or suggest a shaving aid material pump, as recited in claim 12, Resnick fails to disclose each and every

element of the claimed invention. Thus, Resnick also necessarily fails to anticipate the claimed invention. Appellants accordingly respectfully request that the Board overturn the rejections of claim 12 based on Resnick.

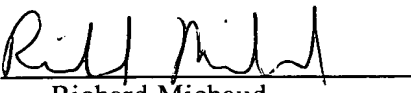
As stated above, dependent claims, by definition, add recitations that further define the subject matter of the independent claims from which they depend. Because claims 13, 14, and 16-18 depend from claim 12, and because claim 12 is asserted to be novel for at least the reasons presented above, claims 13, 14, and 16-19 are likewise allowable. Accordingly, Appellants respectfully request that the Board overturn the rejections of claims 13, 14, and 16-18, as well.

D) Conclusion

In summary, as argued above, the '374, the '468 (Miyachi), and the '361 (Resnick) references do not disclose each of the recitations of any of the claims of the present application. Therefore, none of the claims are anticipated by the cited prior art. Accordingly, the Appellant respectfully requests that the Examiner's rejections be overturned and the present application be allowed to issue as a patent.

Appellants have enclosed a check in the amount of \$500.00 covering the applicable fees for filing the present appeal brief. No additional fees are believed to be due with the present submission. However, if any deficiencies exist, they may be charged to Deposit Account No. 503342 maintained by Appellants' attorneys.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A shaving apparatus, comprising;
one or more razor blades;
a reservoir for containing a non-solid shaving aid material;
at least one conduit extending between the reservoir and one or more ports;
and
a pump in fluid communication with one or both of the reservoir and the conduit,
wherein movement of the one or more razor blades actuates the pump, and the pump transfers
shaving aid material from the reservoir to the one or more ports.
2. The shaving apparatus of claim 1, wherein the one or more razor blades are mounted
in a head assembly.
3. The shaving apparatus of claim 1, wherein the one or more razor blades are mounted
in a razor cartridge.
4. The shaving apparatus of claim 3, wherein the pump comprises a mechanism that is
reciprocally operable.
5. The shaving apparatus of claim 4, wherein the mechanism comprises a sleeve, a stem
that translates along a length of the sleeve in a first direction to provide a pressure stroke, and
a spring operably disposed at the sleeve to bias the stem in a second direction to provide a
return stroke.
8. The shaving apparatus of claim 3, further comprising a valve disposed in fluid
communication with the reservoir.
9. The shaving apparatus of claim 8, wherein the valve is a one-way valve operable to
permit the entry of ambient air into the reservoir upon operation of the pump.
10. The shaving apparatus of claim 3, wherein the razor blade is mounted in a razor
cartridge.

11. The shaving apparatus of claim 10, wherein the razor cartridge is pivotally mounted in a head assembly.
12. A shaving aid material pump, comprising:
a reciprocating mechanism selectively operable to transfer shaving aid material from a reservoir to a port for dispensing to a surface being shaved, wherein the reciprocating mechanism includes a biasing mechanism.
13. The pump of claim 12, wherein the reciprocating mechanism further comprises:
a sleeve; and
a stem that translates along at least a portion of a length of the sleeve in a first direction to provide a pressure stroke.
14. The pump of claim 13, wherein the biasing mechanism comprises a spring operably disposed at the sleeve and operably disposed at the stem to bias the stem in a second direction to provide a return stroke.
16. The pump of claim 12, further comprises a conduit extending for the pump to the port.
17. The pump of claim 12, further comprising a valve disposed in communication with the reservoir to provide a pressure differential to facilitate the flow of shaving aid material from the reservoir.
18. The pump of claim 17, wherein the valve is a one-way valve that permits ambient air to enter the reservoir upon operation of the pump.

IX. EVIDENCE APPENDIX

No evidence is submitted with this Appeal Brief.

X. RELATED PROCEEDINGS APPENDIX

No related proceedings are known to Appellants, Appellants' legal representatives, or assignees.